

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
) CR-18-00258-EJD
 PLAINTIFF,)
) SAN JOSE, CALIFORNIA
 VS.)
) AUGUST 11, 2020
 ELIZABETH A. HOLMES AND)
 RAMESH SUNNY BALWANI,) PAGES 1 - 16
)
 DEFENDANTS.)
 _____)

TRANSCRIPT OF ZOOM PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S BY ZOOM:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
VANESSA BAEHR-JONES
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S BY ZOOM: (CONT'D)

FOR DEFENDANT HOLMES: WILLIAMS & CONNOLLY LLP
BY: KEVIN M. DOWNEY
LANCE A. WADE
KATHERINE A. TREFZ
AMY M. SAHARIA
725 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20005

FOR DEFENDANT BALWANI: ORRICK, HERRINGTON & SUTCLIFFE LLP
BY: JEFFREY COOPERSMITH
701 FIFTH AVENUE, SUITE 5600
SEATTLE, WASHINGTON 98104

BY: STEPHEN A. CAZARES
77 SOUTH FIGUEROA STREET, SUITE 3200
LOS ANGELES, CALIFORNIA 90017

1 SAN JOSE, CALIFORNIA

AUGUST 11, 2020

2 P R O C E E D I N G S

10:09AM 3 (COURT CONVENED AT 10:09 A.M.)

10:09AM 4 THE COURT: THANK YOU. GOOD MORNING. LET'S CALL

10:09AM 5 18-258. THIS IS UNITED STATES VERSUS HOLMES AND BALWANI.

10:09AM 6 THANK YOU, MS. KRATZMANN, FOR SIGNING EVERYBODY IN.

10:09AM 7 THIS IS A VIDEO HEARING, A VIDEO CONFERENCE HEARING. I

10:09AM 8 KNOW EVERYONE HAS JUST IDENTIFIED THEMSELVES, BUT WE'RE ON THE

10:09AM 9 RECORD HERE.

10:09AM 10 LET ME ASK THE PARTIES TO ONCE AGAIN PLEASE STATE YOUR

10:10AM 11 APPEARANCE FOR THE RECORD. WE'LL START WITH THE GOVERNMENT.

10:10AM 12 WHO APPEARS FOR THE GOVERNMENT?

10:10AM 13 MR. LEACH: THANK YOU, YOUR HONOR.

10:10AM 14 ROBERT LEACH ON BEHALF OF THE UNITED STATES.

10:10AM 15 I'M JOINED BY JEFF SCHENK, JOHN BOSTIC, AND

10:10AM 16 VANESSA BAEHR-JONES.

10:10AM 17 THE COURT: THANK YOU. GOOD MORNING TO EACH OF YOU.

10:10AM 18 AND FOR DEFENDANT HOLMES WHO APPEARS?

10:10AM 19 MR. WADE: GOOD MORNING, YOUR HONOR.

10:10AM 20 IT'S LANCE WADE FROM WILLIAMS & CONNOLLY ON BEHALF OF

10:10AM 21 MS. HOLMES.

10:10AM 22 WITH ME THIS MORNING, OR THIS AFTERNOON ON OUR COAST, IS

10:10AM 23 MR. DOWNEY, MS. SAHARIA, AND MS. TREFZ.

10:10AM 24 I'LL ALSO NOTE THAT MS. HOLMES IS PRESENT AS WELL. AND

10:10AM 25 CONSISTENT WITH PRIOR DIRECTION FROM THE COURT, WE'VE MADE

10:10AM 1 ARRANGEMENTS TO BE ABLE TO COMMUNICATE WITH HER IN THE EVENT A
10:10AM 2 BRIEF RECESS IS NECESSARY.

10:10AM 3 THE COURT: THANK YOU. GOOD MORNING TO EACH OF YOU.

10:10AM 4 LET ME ASK YOU, MR. WADE, DO YOU AND YOUR CLIENT CONSENT
10:11AM 5 TO PROCEEDING BY WAY OF VIDEO CONFERENCING RECOGNIZING THAT
10:11AM 6 YOUR CLIENT DOES HAVE THE RIGHT TO HAVE A PERSONAL APPEARANCE
10:11AM 7 IN THE COURT?

10:11AM 8 BUT AS I'VE STATED BEFORE, YOU'VE HEARD ME STATE THIS,
10:11AM 9 BECAUSE OF THE COVID CRISIS OUR COURTS HAVE DEVELOPED
10:11AM 10 PROTOCOLS, INCLUDING GENERAL ORDERS, TO MITIGATE THE PRESENCE
10:11AM 11 OF THE PUBLIC FOR THEIR SAFETY AND THE SAFETY OF ALL OF THE
10:11AM 12 LITIGANTS.

10:11AM 13 RECOGNIZING THAT, DO YOU AGREE TO PROCEED BY WAY OF THIS
10:11AM 14 VIDEO CONFERENCE?

10:11AM 15 MR. WADE: WE DO CONSENT TO APPEARANCE IN THIS
10:11AM 16 MANNER, YOUR HONOR.

10:11AM 17 THE COURT: THANK YOU. THANK YOU VERY MUCH.

10:11AM 18 AND FOR DEFENDANT BALWANI?

10:11AM 19 MR. COOPERSMITH: GOOD MORNING, YOUR HONOR. THIS IS
10:11AM 20 JEFF COOPERSMITH FROM ORRICK, HERRINGTON & SUTCLIFFE FOR
10:11AM 21 MR. BALWANI.

10:11AM 22 AND I'M JOINED WITH STEPHEN CAZARES ON THE VIDEO.

10:11AM 23 AND MR. BALWANI IS ALSO PRESENT.

10:11AM 24 AS MR. WADE NOTED, WE CAN REACH MR. BALWANI SEPARATELY ON
10:11AM 25 A SEPARATE LINE IF THAT IS EVER NECESSARY.

10:12AM 1 THE COURT: THANK YOU. AND DOES YOUR CLIENT ALSO
10:12AM 2 CONSENT TO PROCEEDING BY WAY OF A VIDEO CONFERENCE THIS
10:12AM 3 MORNING?

10:12AM 4 MR. COOPERSMITH: YES, YOUR HONOR.

10:12AM 5 THE COURT: THANK YOU. MR. COOPERSMITH, I'M GOING
10:12AM 6 TO ASK YOU IF IT'S AT ALL POSSIBLE FOR YOU TO MOVE YOUR DEVICE
10:12AM 7 CLOSER TO YOU BY THE MICROPHONE. THAT MIGHT BENEFIT THE COURT
10:12AM 8 REPORTER.

10:12AM 9 ALL RIGHT. THANK YOU.

10:12AM 10 MR. COOPERSMITH: YES, YOUR HONOR, I'LL DO THAT.

10:12AM 11 THE COURT: GREAT. THANK YOU.

10:12AM 12 SO WE SET TODAY'S HEARING AS ANOTHER STATUS CONFERENCE IN
10:12AM 13 REGARDS TO OUR LAST HEARING AND MY THOUGHTS ABOUT THE TRIAL IN
10:12AM 14 THIS MATTER.

10:12AM 15 I HAVE RECEIVED YOUR DOCUMENT 482, WHICH IS YOUR JOINT
10:12AM 16 STATUS REPORT. THANK YOU FOR YOUR EFFORTS IN PUTTING THAT
10:12AM 17 TOGETHER AND FOR MEETING AND CONFERRING AND COMING UP WITH
10:12AM 18 DATES. I APPRECIATE IT.

10:12AM 19 I APPRECIATE YOUR EFFORTS TO MEET TO, AS I SAID BEFORE,
10:12AM 20 ADVANCE THE TRIAL AS BEST WE CAN, GIVEN THE CURRENT PANDEMIC
10:12AM 21 SITUATION.

10:12AM 22 THE TRIAL DATE IS ONE THING THAT WE'RE TRYING TO JUGGLE
10:13AM 23 AND CAPTURE FOR YOU, BUT THE WORK BEHIND THE TRIAL AS YOU ALL
10:13AM 24 KNOW, AND YOU'RE EXPERIENCED LITIGATORS, THAT'S REALLY WHERE
10:13AM 25 THE MEAT OF THE CASE IS, ISN'T IT, WITH THE WORK BEFORE. AND

10:13AM 1 THIS SCHEDULE THAT YOU'VE PRESENTED IS A GOOD SCHEDULE.

10:13AM 2 I SHOULD TELL I KNOW THAT YOU TOOK NO PRIDE IN AUTHORSHIP.
10:13AM 3 YOU OFFERED IT TO THE COURT SUGGESTING THAT THE COURT LOOK AT
10:13AM 4 IT AND MAKE SOME CHANGES. AND I'VE DONE THAT. BUT I WANTED TO
10:13AM 5 THANK YOU IN ADVANCE FOR GIVING ME AT LEAST THE INITIAL
10:13AM 6 SCHEDULE FROM WHICH I COULD WORK.

10:13AM 7 SO WHAT I WANT TO DO IS TO -- FOR PURPOSES OF THIS
10:13AM 8 MORNING, OF COURSE YOU'LL RECEIVE AN ORDER, YOU'LL RECEIVE A
10:13AM 9 HARD COPY OR AT LEAST AN ELECTRONIC COPY AS WE POST IT, BUT I
10:13AM 10 DO WANT TO GO OVER THE DATES.

10:13AM 11 THERE ARE SOME DATES THAT I'M GOING TO CHANGE, AND
10:13AM 12 CANDIDLY, IT MOVES THINGS UP ABOUT A WEEK OR TWO.

10:14AM 13 I DON'T THINK -- FROM MY PERSPECTIVE IT'S NOT DRAMATIC.
10:14AM 14 FROM YOUR PERSPECTIVE WITH THE EXCELLENT TEAMS THAT BOTH SIDES
10:14AM 15 HAVE PUT TOGETHER HERE, I THINK IT'S SOMETHING THAT, IT'S
10:14AM 16 SOMETHING THAT YOU CAN ACCOMPLISH WITH THE SAME EXCELLENCE THAT
10:14AM 17 YOU'VE PRESENTED IN ALL OF THE OTHER ENDEAVORS IN THIS CASE.

10:14AM 18 SO LET ME TELL YOU THAT JUST GOING DOWN YOUR LIST, AND
10:14AM 19 LET'S START WITH -- OF COURSE YOU KNOW THAT NEXT MONDAY'S
10:14AM 20 HEARING DATE REGARDING YOUR MOTION HAS BEEN VACATED. THAT'S
10:14AM 21 UNDER SUBMISSION, AND I'LL GET AN ORDER OUT TO YOU SOON ON
10:14AM 22 THAT.

10:14AM 23 SO WE'LL VACATE THE MONDAY, AUGUST 17TH HEARING DATE.

10:14AM 24 THE NEXT EVENT WOULD BE THE PRETRIAL MOTIONS, YOUR 12(B)
10:14AM 25 MOTIONS, AND I'M GOING TO MOVE THAT, THAT IS, THE DATES TO BE

10:14AM 1 FILED TO FRIDAY, AUGUST 28TH.

10:15AM 2 BUT LET ME ASK A QUESTION, DO YOU -- A QUESTION THAT WE
10:15AM 3 WERE DISCUSSING IN CHAMBERS, CANDIDLY, WAS, GEE, I WONDER HOW
10:15AM 4 MANY MOTIONS THERE ARE GOING TO BE.

10:15AM 5 NOW, I KNOW YOU CAN'T GIVE ME A NUMBER TODAY PERHAPS, AND
10:15AM 6 I CERTAINLY WOULDN'T HOLD YOU TO IT, BUT THAT IS A QUESTION,
10:15AM 7 HOW MANY OF THESE MOTIONS, 12(B) MOTIONS CAN WE ANTICIPATE?

10:15AM 8 AND I DON'T KNOW, MR. WADE, IF IT'S FAIR TO ASK YOU TO
10:15AM 9 COMMENT, YOU OR MR. DOWNEY ON THAT, OTHER THAN TO SAY YOU'LL DO
10:15AM 10 WHAT YOU NEED TO DO TO SUPPORT YOUR CLIENT'S INTEREST IN THE
10:15AM 11 CASE. I RECOGNIZE THAT.

10:15AM 12 BUT -- GO AHEAD.

10:15AM 13 MR. WADE: YES. THANK YOU. THANK YOU, YOUR HONOR.
10:15AM 14 I THINK WE NOTED IN A PREVIOUS HEARING WE EXPECT IN THE
10:15AM 15 NEIGHBORHOOD OF FOUR TO SIX MOTIONS.

10:15AM 16 OBVIOUSLY UNTIL YOU WRITE THEM AND COMPLETE ALL OF THE
10:15AM 17 RESEARCH, YOU NEVER KNOW FOR CERTAIN WHETHER YOU'LL FILE IT,
10:16AM 18 BUT WE ANTICIPATE FOUR TO SIX MOTIONS.

10:16AM 19 THE COURT: OKAY. THANK YOU FOR THAT. I APPRECIATE
10:16AM 20 THAT.

10:16AM 21 NEXT, GOING DOWN ON THE SCHEDULE THE GOVERNMENT TO SERVE
10:16AM 22 ANY SUPPLEMENT TO 404(B) AND EXPERT DISCLOSURES. I AM NOT
10:16AM 23 GOING TO -- LET'S SEE, THAT SHOULD BE MONDAY, SEPTEMBER 14TH.

10:16AM 24 THE RESPONSES TO THE 12(B)'S IS SOMETHING THAT I HAVE
10:16AM 25 MOVED, AND I'VE MOVED THAT TO SEPTEMBER 20TH, MR. LEACH,

10:16AM 1 SEPTEMBER 20, AND THAT WOULD BE RESPONSES TO THE 12(B) MOTIONS.

10:16AM 2 DEFENDANTS SERVE WITNESS AND EXHIBIT LISTS FOR THE
10:16AM 3 CASE-IN-CHIEF IS SEPTEMBER 29.

10:16AM 4 DEFENDANTS SERVING RULE 16 SUMMARY FOR EACH EXPERT WITNESS
10:16AM 5 FOR CASE-IN-CHIEF IS OCTOBER 6TH, TUESDAY, OCTOBER 6TH.

10:16AM 6 THE NEXT REAL CHANGE IS THE REPLIES FOR THE 12(B) MOTIONS,
10:16AM 7 AND THAT WILL BE FRIDAY, OCTOBER 2ND, FRIDAY, OCTOBER 2ND.

10:17AM 8 I'M HOPING THAT WE CAN DO HEARINGS ON THE 12(B) MOTIONS ON
10:17AM 9 TUESDAY, OCTOBER 6TH.

10:17AM 10 THE GOVERNMENT SHALL SERVE RULE 16 SUMMARIES FOR EXPERT
10:17AM 11 WITNESS AND REBUTTAL TO DEFENSE EXPERTS ON OCTOBER 27TH.

10:17AM 12 THE STATUS CONFERENCE REGARDING THE TRIAL DATE, I'M GOING
10:17AM 13 TO MOVE A DAY TO WEDNESDAY -- EXCUSE ME, DECEMBER 2ND,
10:17AM 14 WEDNESDAY, DECEMBER 2ND.

10:17AM 15 AND, MS. KRATZMANN, WHAT TIME CAN WE, CAN WE HAVE THAT
10:17AM 16 HEARING?

10:18AM 17 THE CLERK: YOUR HONOR, THAT CAN BE DECEMBER 2ND,
10:18AM 18 WEDNESDAY AT 10:00 A.M.

10:18AM 19 THE COURT: ALL RIGHT. THANK YOU. LET'S DO THAT,
10:18AM 20 COUNSEL, 10:00 A.M. AGAIN, THAT IS A STATUS CONFERENCE
10:18AM 21 REGARDING TRIAL I'LL CALL IT. AND I'M SETTING THAT SO WE CAN
10:18AM 22 CONTINUE TO MONITOR CONDITIONS AND GET AN UPDATE ON THE GENERAL
10:18AM 23 STATUS OF THINGS.

10:18AM 24 THE NEXT DATE THAT HAS SOME CHANGE IN IT, AND I NOTE THAT
10:18AM 25 IN THE SCHEDULE THAT YOU'VE PRESENTED, THE WEEK -- EXCUSE ME,

10:18AM 1 THE MONTH OF NOVEMBER WAS PRETTY VACANT, AND I EXPECT THAT'S
10:18AM 2 FOR HOLIDAY PURPOSES AND ALSO REGROUPING.

10:18AM 3 WHAT I'M GOING TO DO IS TO SET THE MOTION IN LIMINE AND
10:18AM 4 MOTIONS REGARDING EXPERTS DUE ON FRIDAY, NOVEMBER 20TH. I'D
10:18AM 5 LIKE TO DO THAT.

10:19AM 6 I'M ANTICIPATING -- AND THIS IS JUST STRATEGIC PLANNING ON
10:19AM 7 MY PART IN THE SPIRIT OF FULL DISCLOSURE. IT MAY BE THAT IT
10:19AM 8 MAKES MORE SENSE TO HAVE OUR MOTION IN LIMINE HEARING A
10:19AM 9 SEPARATE STANDALONE DATE APART FROM OUR PRETRIAL CONFERENCE. I
10:19AM 10 KNOW TYPICALLY THOSE TWO THINGS ARE CONJOINED, WE DO THOSE
10:19AM 11 TOGETHER.

10:19AM 12 I'M JUST ANTICIPATING IT MIGHT MAKE SCHEDULING SENSE FOR
10:19AM 13 US TO HAVE OUR MIL MOTIONS DONE ON A STANDALONE DATE, AND
10:19AM 14 THAT'S WHY I SET THIS.

10:19AM 15 RESPONSES TO MOTION IN LIMINES AND MOTIONS REGARDING
10:19AM 16 EXPERTS WOULD BE DUE DECEMBER 18.

10:19AM 17 AND I KNOW MR. LEACH IS REALLY EAGER TO HAVE ME TO
10:19AM 18 SCHEDULE SOMETHING THROUGH THE DECEMBER HOLIDAY SEASON. BUT,
10:19AM 19 MR. LEACH, I'M GOING TO BACK OFF FROM THAT AND RATHER WE'LL
10:19AM 20 HAVE THE REPLIES FOR THE MOTION IN LIMINES AND EXPERTS, THOSE
10:19AM 21 WILL BE DUE ON FRIDAY, JANUARY 15TH, JANUARY 15TH.

10:20AM 22 THEN I'D LIKE TO SET THE HEARING, THE STANDALONE HEARING
10:20AM 23 THAT I SPOKE ABOUT FOR THE MOTION IN LIMINES, LET'S DO THAT ON
10:20AM 24 FRIDAY, JANUARY 22ND, FRIDAY, JANUARY 22ND.

10:20AM 25 MS. KRATZMANN, CAN THAT BE AT 10:00 A.M. PACIFIC TIME?

10:20AM 1 THE CLERK: YES, YOUR HONOR, THAT CAN BE AT
10:20AM 2 10:00 A.M.

10:20AM 3 THE COURT: WE'LL DO THAT.

10:20AM 4 TUESDAY, FEBRUARY 9TH WILL BE THE DUE DATE FOR THE
10:20AM 5 PRETRIAL CONFERENCE STATEMENT.

10:20AM 6 AND THEN WE'LL MOVE THE PRETRIAL CONFERENCE. AND I KNOW
10:20AM 7 YOU'RE VERY EAGER TO GET THIS DONE. I KNOW THAT YOU SCHEDULED
10:20AM 8 THIS ON A HOLIDAY, FEBRUARY 15TH.

10:20AM 9 LET ME TELL YOU, AND I CHECKED WITH STAFF, AND THE
10:20AM 10 PREFERENCE WOULD BE TO DO IT THE FOLLOWING DAY, THE 16TH,
10:20AM 11 PLEASE, SO WE'LL DO IT ON FEBRUARY 16TH, FEBRUARY 16TH.

10:20AM 12 MS. KRATZMANN, WHAT TIME SHOULD THAT BE?

10:21AM 13 DO WE HAVE 10:00 A.M. AVAILABLE, TUESDAY?

10:21AM 14 THE CLERK: JUST ONE MOMENT, YOUR HONOR. I NEED TO
10:21AM 15 SWITCH MY SCREEN.

10:21AM 16 FEBRUARY 16TH AT 10:00 A.M., YOUR HONOR, IS AVAILABLE.

10:21AM 17 THE COURT: ALL RIGHT. THANK YOU. 10:00 A.M.

10:21AM 18 AND JURY SELECTION, AND I KNOW YOU HAD -- AND THANKS FOR
10:21AM 19 YOUR MEMO, YOU SUGGEST TRIAL DATES AND JURY SELECTION DATES.
10:21AM 20 I'M GOING TO SET THE -- I SAY THE TRIAL WILL BEGIN MARCH 9TH,
10:21AM 21 MARCH 9TH. IT BEGINS WITH JURY SELECTION. SO THE JURY
10:21AM 22 SELECTION WILL START MARCH 9TH, MARCH 9TH AT 9:00 A.M.

10:21AM 23 THE PURPOSE OF THE PRETRIAL CONFERENCE, AS YOU KNOW, IS TO
10:21AM 24 DISCUSS OTHER MATTERS, AND I ANTICIPATE THAT WE WILL AT THE
10:22AM 25 PRETRIAL CONFERENCE DISCUSS WHAT MEASURES BOTH SIDES ARE

1 ANTICIPATING TO USE FOR THE JURY SELECTION.

2 AND LET ME JUST BE CLEAR AND NOT OPAQUE. I ANTICIPATE
3 THAT YOU'LL HAVE SOME JURY QUESTIONNAIRES THAT YOU MIGHT
4 PREPARE FOR THIS CASE THAT WILL INCLUDE CERTAIN ISSUES,
5 INCLUDING TIMING ISSUES SO WE CAN APPROPRIATELY TIME SCREEN THE
6 VENIRE AND GET THAT ISSUE OUT OF THE WAY. SO WE'LL DISCUSS HOW
7 THAT WILL WORK.

8 AS YOU SEE, MARCH 9TH THE TRIAL WILL START WITH THE JURY
9 SELECTION. IT MAY BE THAT THE JURY SELECTION WILL TAKE US A
10 DAY OR TWO OR THREE, THAT IS, TO FRIDAY THE 12TH.

11 I ANTICIPATE THAT EVIDENCE WILL START ON MARCH 16TH,
12 MARCH 16TH, OR AT LEAST OPENING STATEMENTS WOULD BEGIN
13 MARCH 16TH, TUESDAY, MARCH 16TH.

14 I TELL YOU THAT IN ADVANCE NOW, IF WE GET A JURY BY
15 3:00 P.M. ON MARCH 9TH, DO I ASK YOU TO MAKE YOUR OPENING
16 STATEMENTS ON THE 10TH? WELL, WE'LL SEE. THAT'S WHAT THE
17 PRETRIAL CONFERENCE WILL BE.

18 BUT I'M ANTICIPATING THAT WEEK WE'LL PROBABLY ENGAGE THE
19 PROCESS OF JURY SELECTION SUCH THAT WE CAN START FRESH THE WEEK
20 FOLLOWING.

21 SO THAT'S THE SCHEDULE THAT I'M GOING TO ADVANCE.
22 YOU'LL -- AS I SAID, I'LL POST THIS SCHEDULE, AND YOU'LL GET A
23 POSTING OF IT, AND YOU'LL HAVE IT ELECTRONICALLY FOR YOU.
24 THAT'S WHAT I WANTED TO ADVANCE FOR YOU NOW.

25 ANYTHING THAT ANYONE ELSE WANTS TO SAY IN REGARDS TO

10:23AM 1 MS. HOLMES'S TRIAL? AND I'LL TALK ABOUT MR. BALWANI IN JUST A
10:23AM 2 MOMENT.

10:23AM 3 MR. LEACH: YOUR HONOR, APART FROM MY DISAPPOINTMENT
10:23AM 4 I HAVE EXTRA TIME OVER THE HOLIDAYS AND I'M NOT WORKING ON THE
10:23AM 5 HOLIDAY IN FEBRUARY, THAT'S FINE WITH THE GOVERNMENT.

10:23AM 6 THE COURT: ALL RIGHT. THANK YOU, MR. LEACH. I
10:24AM 7 APPRECIATE THAT CONCESSION. THANK YOU.

10:24AM 8 MR. WADE: WE AGREE WITH THE GOVERNMENT. I THINK
10:24AM 9 THAT'S FAIR AND REASONABLE, YOUR HONOR. THANK YOU.

10:24AM 10 THE COURT: ALL RIGHT. THANK YOU, MR. WADE.

10:24AM 11 SO AS TO MR. BALWANI, I'M THINKING THAT WE SHOULD SET A
10:24AM 12 STATUS CONFERENCE FOR MR. BALWANI, MR. COOPERSMITH. I'D LIKE
10:24AM 13 TO DO THAT SOME TIME IN DECEMBER, PLEASE.

10:24AM 14 MS. KRATZMANN, I THINK IF YOU COULD FIND A DATE, EITHER
10:24AM 15 THE FIRST OR SECOND WEEK. I DON'T WANT TO GO BEYOND THE SECOND
10:24AM 16 WEEK OF DECEMBER FOR THAT PURPOSE.

10:24AM 17 THE CLERK: YES, YOUR HONOR.

10:24AM 18 ARE THE PARTIES AVAILABLE DECEMBER 8TH AT 10:00 A.M.?
10:24AM 19 THAT'S A TUESDAY.

10:24AM 20 MR. COOPERSMITH: YES, YOUR HONOR. ONE QUESTION,
10:24AM 21 THOUGH. I THINK WE HAVE AN AUGUST 31ST CONFERENCE SCHEDULED.
10:24AM 22 IS THAT STILL ON CALENDAR?

10:24AM 23 THE COURT: THANK YOU FOR THAT. MY INTENT IS TO
10:24AM 24 VACATE THAT.

10:25AM 25 MR. COOPERSMITH: UNDERSTOOD. YES, YOUR HONOR.

10:25AM 1 MR. LEACH: YOUR HONOR, DECEMBER 8TH IS FINE WITH
10:25AM 2 THE GOVERNMENT.

10:25AM 3 THE COURT: OKAY. LET'S DO THAT.

10:25AM 4 SHOULD THAT BE AT 10:0 A.M., MS. KRATZMANN?

10:25AM 5 THE CLERK: YES, YOUR HONOR, 10:00 A.M.

10:25AM 6 THE COURT: OKAY. ALL RIGHT. THANK YOU. I THINK
10:25AM 7 WE'VE ACCOMPLISHED EVERYTHING WE NEEDED TO DO THIS MORNING.

10:25AM 8 ANYTHING ELSE, MR. COOPERSMITH, MR. CAZARES AN BEHALF OF
10:25AM 9 YOUR CASE, YOUR CLIENT?

10:25AM 10 MR. COOPERSMITH: NO, YOUR HONOR. THANK YOU.

10:25AM 11 THE COURT: ALL RIGHT. THANK YOU.

10:25AM 12 MR. WADE, ANYTHING ELSE ON BEHALF OF YOU OR YOUR TEAM?

10:25AM 13 MR. WADE: NOTHING, YOUR HONOR. THANK YOU.

10:25AM 14 THE COURT: THANK YOU. MR. LEACH, ANYTHING FURTHER?

10:25AM 15 MR. LEACH: YOUR HONOR, IN LIGHT OF THE PREPARATION
10:25AM 16 THAT STILL NEEDS TO TAKE PLACE AND IN LIGHT OF THE LIMITS THAT
10:25AM 17 WE'RE ALL UNDER COVID-19, I THINK IT'S APPROPRIATE TO EXCLUDE
10:25AM 18 TIME FOR EFFECTIVE PREPARATION FOR MS. HOLMES'S THROUGH THE
10:25AM 19 TRIAL DATE THAT THE COURT IS ABOUT TO SET AS WELL AS
10:26AM 20 MR. BALWANI THROUGH THE DECEMBER 8TH HEARING.

10:26AM 21 THE COURT: THANK YOU. AND THE COURT DOES FIND THAT
10:26AM 22 IT IS APPROPRIATE TO EXCLUDE TIME BASED ON THE COURT'S
10:26AM 23 RESETTING OF THE SCHEDULES TO ALLOW FOR EFFECTIVE PREPARATION
10:26AM 24 OF COUNSEL.

10:26AM 25 LET ME ASK, MR. WADE, ANY OBJECTIONS TO THE COURT

10:26AM 1 EXCLUDING TIME?

10:26AM 2 MR. WADE: NO OBJECTION, YOUR HONOR.

10:26AM 3 THE COURT: THANK YOU.

10:26AM 4 MR. COOPERSMITH, ANY OBJECTION FOR THE COURT EXCLUDING
10:26AM 5 TIME?

10:26AM 6 MR. COOPERSMITH: YOUR HONOR, IF IT'S OKAY WITH THE
10:26AM 7 COURT, THE LAST TIME WE SUBMITTED A STIPULATION WITH MR. LEACH,
10:26AM 8 WITH THE GOVERNMENT EXCLUDING TIME, WE HAD EXCLUDED TIME
10:26AM 9 THROUGH AUGUST 31ST BECAUSE WE ANTICIPATED THERE WOULD BE A
10:26AM 10 STATUS CONFERENCE.

10:26AM 11 WHAT I'D LIKE TO DO -- I HAVE NOT HAD A CHANCE TO DISCUSS
10:26AM 12 THAT WITH MR. BALWANI BECAUSE WE DIDN'T REALIZE THAT WOULD COME
10:26AM 13 UP.

10:26AM 14 IF WE COULD HAVE A DAY TO CONSULT WITH MR. BALWANI, AND
10:26AM 15 THEN WE'LL WORK WITH MR. LEACH TO SUBMIT A STIPULATION IF WE IN
10:26AM 16 FACT AGREE TO EXCLUDE THE TIME. THAT SHOULD JUST BE A DAY OR
10:27AM 17 TWO.

10:27AM 18 THE COURT: WELL, SHOULD I LEAVE THE -- THANK YOU
10:27AM 19 FOR THAT. I APPRECIATE YOUR CANDOR.

10:27AM 20 SHOULD I LEAVE THEN THE AUGUST 31ST DATE ON INCLUDING THE
10:27AM 21 EXCLUSION OF TIME AND THEN WAIT FOR YOUR STIPULATION TO EXTEND
10:27AM 22 THAT TO ANOTHER DATE?

10:27AM 23 MR. COOPERSMITH: YOUR HONOR, JUST BECAUSE I DON'T
10:27AM 24 WANT TO PREJUDGE IT, THAT WOULD WORK, BUT I ANTICIPATE THAT IF
10:27AM 25 WE SUBMIT THE STIPULATION WITH THE GOVERNMENT THEN THE COURT

10:27AM 1 WOULD GO AHEAD AND VACATE THE AUGUST 31ST DATE AS YOU SAID; IS
10:27AM 2 THAT CORRECT?

10:27AM 3 THE COURT: THAT MIGHT -- I APPRECIATE THAT. THAT
10:27AM 4 MIGHT CREATE AN INTERRUPTION IN THE TIME, THOUGH.

10:27AM 5 MR. LEACH?

10:27AM 6 MR. LEACH: YOUR HONOR, I THINK IT WOULD BE PRUDENT
10:27AM 7 TO KEEP THE AUGUST 31ST DATE ON CALENDAR FOR NOW. I'M HOPEFUL
10:27AM 8 THAT MR. COOPERSMITH AND I WILL REACH AN AGREEMENT TO AN
10:27AM 9 APPROPRIATE STIPULATION AND IN THAT STIPULATION, IF WE DO REACH
10:27AM 10 AGREEMENT, WE COULD PROPOSE THAT THE 31ST DATE BE VACATED AND
10:27AM 11 RESET FOR THE 8TH.

10:27AM 12 BUT TIME IS EXCLUDED THROUGH THE 31ST. I THINK IT'S WISE
10:28AM 13 TO KEEP THAT ON CALENDAR FOR NOW JUST SO WE DON'T LOSE THAT.

10:28AM 14 BUT I'M HOPEFUL THAT WE'LL HAVE AN APPROPRIATE STIPULATION
10:28AM 15 WITH MR. COOPERSMITH WHICH WE COULD SUBMIT SHORTLY.

10:28AM 16 THE COURT: OKAY. WELL, I'D BE SURPRISED IF YOU
10:28AM 17 HADN'T. ALL COUNSEL HAVE BEEN COOPERATIVE THROUGHOUT THIS
10:28AM 18 PROCESS HERETOFORE.

10:28AM 19 SO LET ME -- MS. KRATZMANN, I AM NOT GOING TO VACATE -- I
10:28AM 20 AM GOING TO SET ASIDE THAT PREVIOUS ORDER. I WILL NOT VACATE
10:28AM 21 THE AUGUST 31ST DATE. THAT WILL REMAIN ON CALENDAR ALONG WITH
10:28AM 22 THE TIME EXCLUSION TO AUGUST 31ST. AND SHOULD THERE BE A NEED
10:28AM 23 TO CHANGE THAT BY WAY OF STIPULATION, WE'LL RECEIVE THAT, AND
10:28AM 24 IT WILL INCLUDE ANY TIME EXCLUSION GOING FORWARD THEN. I'LL
10:28AM 25 RECEIVE THAT.

10:28AM 1 THE CLERK: UNDERSTOOD.

10:28AM 2 THE COURT: OKAY. DOES THAT WORK FOR YOU,

10:28AM 3 MR. COOPERSMITH?

10:28AM 4 MR. COOPERSMITH: YES, YOUR HONOR. THANK YOU.

10:28AM 5 THE COURT: ANYTHING FURTHER?

10:28AM 6 MR. LEACH: NOT FROM THE GOVERNMENT, YOUR HONOR.

10:28AM 7 THANK YOU.

10:28AM 8 THE COURT: ALL RIGHT. THANK YOU. IT'S GOOD SEEING

10:28AM 9 YOU ALL. PLEASE BE SAFE, CONTINUE TO BE SAFE, YOU AND YOUR

10:29AM 10 FAMILIES AND EVERYONE, AND I WISH YOU GOOD HEALTH AND I KNOW

10:29AM 11 WE'LL BE SEEING EACH OTHER AGAIN SOON.

10:29AM 12 THANK YOU VERY MUCH.

10:29AM 13 MR. BOSTIC: THANK YOU, YOUR HONOR.

10:29AM 14 MR. DOWNEY: THANK YOU, YOUR HONOR.

10:29AM 15 THE CLERK: COURT IS ADJOURNED.

10:29AM 16 (COURT CONCLUDED AT 10:29 A.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: SEPTEMBER 16, 2020